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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900-AO95

Applicants for VA Memorialization Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations defining who may apply for a headstone or marker. The rule expands the types of individuals who may request headstones and markers on behalf of decedents.

DATES: The final rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Eric Powell, Deputy Director, Memorial Programs Service (41B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 501-3060. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 1, 2014 (79 FR 59176), VA proposed revising its regulations regarding applicants for headstones and markers. The rule expanded the definition of applicant to allow more individuals to request that VA provide a burial headstone or marker for unmarked graves or

a memorial headstone or marker if remains are not available for burial.

Interested person were invited to submit comments on the proposed rule on or before December 1, 2014. VA received a total of 387 comments from interested stakeholders, including members of Congress, state and local officials, as well as members of genealogical, historical, and veterans service organizations.

Because of the number of comments, both positive and negative, we have grouped them together by issue or content, and will address each group below.

For the reasons set forth below and in the proposed rule, we adopt the proposed rule as final, with the changes explained below. To address some of these comments, VA added a new 38 CFR 38.600(a)(1)(iv) and re-designated proposed paragraphs (a)(1)(iv) and (a)(1)(v) as paragraphs (a)(1)(v) and (a)(1)(vi), respectively.

Supportive Comments

Of the 387 comments, more than half expressed support for an agreement with the proposed amendment to the headstone and marker applicant definition. Many of the supportive commenters urged VA's prompt implementation of the proposed expanded applicant definition and praised VA for broadening the applicant standard because it would result in marking veteran gravesites that would otherwise remain unmarked, particularly for veterans who served prior to World War I (WWI). Although most commenters did not specifically comment on any particular provision of the rule, several commenters provided information about specific claims they had made previously that had been denied or that they

feel now would be allowed under the revised rule. Others merely stated that their ancestors' graves are unmarked without indicating whether they had previously attempted to obtain a VA headstone or marker. VA's intent is that the expanded applicant definition will encourage more people to present memorialization claims. However, as one individual accurately pointed out, the public comment forum is not an appropriate means to present a claim for a headstone or marker. VA considers any information in these comments that refers to specific claims to be outside the scope of the proposed rule. To the extent that this final rule discusses any of these comments, such discussion should not be construed as a determination on such purported claims. However, we encourage those individuals whose memorialization claims were denied under the previously more restrictive applicant definition to resubmit their requests, which VA will review on a de novo basis. Because none of these commenters raised specific objections to the rule, and because the rule will allow for many more individuals to apply for memorialization of their ancestors, we interpret these comments to be supportive of the regulation itself, as proposed. VA appreciates the efforts of all those who took the time to review the proposed rule and provide their comments. Because these commenters suggested no changes to the rule, we make no changes to the rule as proposed, based on these comments.

Inclusion of Other Groups as Applicants

We received multiple comments from individuals who suggested that various entities, such as historical societies, genealogical societies, cemetery associations, or other similar entities, be listed as separate categories of applicants in the regulation so that they may request headstones or markers for the graves of veterans. Along these same lines, we received numerous suggestions to include, or requests that we clarify whether the rule includes, specifically-named groups or organizations. Commenters listed the Daughters of the American Revolution, Sons of the American Revolution, General Society of the War of 1812, Sons of Union Veterans of the Civil War, and Sons of Confederate Veterans, and other similar entities, which may be generally categorized as “lineage societies,” as groups they desired to see added to the regulation.

We do not believe that the regulation must be changed to include those additional categories or to allow these specifically-named groups to apply for headstones and markers. We understand commenters’ desire to have explicit authority for a particular entity that they support or to which they belong, but it is not practical to list every entity that may apply under the regulation. This is why we created broad categories to describe who may apply for a headstone or marker. The entities listed above all appear, by their names or descriptions, to have an interest in veterans whose service ended prior to April 6, 1917, the date on which the United States entered WWI. To the extent that commenters belong to such groups and seek to apply for headstones and markers for veterans with

such service, and the comments that they made indicate this to be the case, they may do so under proposed § 38.600(a)(1)(v), now re-designated as § 38.600(a)(1)(vi), which allows for “any individual” to apply for a headstone or marker for veterans whose service ended prior to April 6, 1917, or for an individual whose eligibility is based on such service. We make no changes based on these comments.

We received eight comments from individuals requesting the addition of county veterans service officers (CVSOs) to the list of applicants in § 38.600(a)(1)(iii), which, as proposed, only included representatives of Congressionally-chartered veterans service organizations (VSOs). One commenter equated the work of CVSOs to that of Congressionally-chartered VSO representatives who assist with and represent veterans and their families in their VA benefit claims. Other commenters noted that CVSOs work collaboratively with VA and other national VSOs, as well as funeral homes and cemetery caretakers on behalf of homeless and unclaimed veterans. We agree that VA should accept memorialization claims from CVSOs, in much the same manner as we will accept claims from Congressionally-chartered VSO representatives. We acknowledge the valuable work that CVSOs do on behalf of veterans and the collaborative nature of their relationship with VA and VA’s National Cemetery Administration. However, we believe that merely adding CVSOs to our applicant definition will not be sufficient, as it fails to recognize other individuals, employed by government entities other than counties, whose vocation also is to serve and assist veterans and their families in a variety of

ways. For this reason, we are adding a new § 38.600(a)(1)(iv), which adds, to the definition of applicant, an individual employed by the relevant state or local government if that individual's official responsibilities include serving veterans and families of veterans. We include the phrase "such as a state or county veterans service officer" to assist readers in understanding the type of individual we are recognizing. We thank the commenters for bringing this additional category to our attention and for their ongoing service to our nation's veterans.

VA received nine comments from members of state-authorized cemetery commissions and other locally-based entities authorized under state or local laws to maintain local, possibly historic cemeteries, requesting that VA include them on the list of applicants for VA memorialization benefits. Most of these comments were from representatives of Iowa Pioneer Cemetery Commissions from various counties in Iowa. We found that Iowa Code § 331.325, "Control and maintenance of pioneer cemeteries – cemetery commission," authorizes county boards to assume jurisdiction and control of pioneer cemeteries, defined in the state law as those in which there have been twelve or fewer burials in the past fifty years. Because comments were received from individuals representing similar entities in at least two other states, we believe that other states also may authorize commissions, counties, townships, and other local entities to be responsible for the maintenance, repair, and improvement of cemeteries, including pioneer cemeteries. However, we do not believe that the regulation must be revised to recognize these entities as proper applicants for a VA burial headstone or marker. Proposed § 38.600(a)(1)(iv), now re-designated as

§ 38.600(a)(1)(v), provides that individuals responsible under state or local laws for the disposition of unclaimed remains or other matters relating to a decedent's interment or memorialization may apply for headstones or markers. As we explained in the proposed rule, this would include "those responsible for the operation and maintenance of a cemetery, because their activities are regulated by state or local laws." 79 FR at 59177. Entities such as the Iowa Pioneer Cemetery Commissions would have such authority. As with the historical and genealogical societies discussed above, we cannot list every type of entity responsible under state or local law for the disposition of unclaimed remains or matters relating to interment or memorialization. However, we clarify that VA will accept burial headstone or marker requests from members of the Iowa Pioneer Cemetery Commissions and from applicants who are similarly situated. When presented with a burial headstone or marker claim from an applicant who indicates that they are responsible under state or local law to handle a decedent's burial or memorialization needs, VA may ask the applicant to provide information about the authorizing statute to ensure the applicant's standing. Because we believe these entities are provided for in the rule, we make no changes based on these comments.

Revert to Previous Applicant Standard

VA received three comments suggesting that we revert to the applicant standard that was in effect prior to implementation of the 2009 applicant definition. One commenter asserted that, prior to 2009, there was no definition.

While it is true that there was no definition of applicant in our regulations, VA's policy was to accept memorialization requests from VSOs, landowners, and anyone with knowledge of the decedent. The final rule explicitly allows for application by a representative of a Congressionally-chartered VSO (and, with the amendments discussed above, an individual employed by the relevant state or local government whose official responsibilities include serving veterans and families of veterans). Depending on specific circumstances, owners of land containing the burial site of an individual eligible for a VA-furnished headstone or marker may be determined to be "responsible...for other matters relating to the interment or memorialization of the decedent" under proposed § 38.600(a)(1)(iv), now redesignated as § 38.600(a)(1)(v), and so may also apply. Re-designated § 38.600(a)(1)(vi) will allow for any individual to apply for a burial headstone or marker if the relevant dates of service of the veteran ended prior to April 6, 1917. This last revision is the only significant difference between the applicant standard that was in place prior to the 2009 amendment and the final rule. As discussed elsewhere in this rulemaking, we believe the April 6, 1917, date is appropriate to ensure that we do not inappropriately deny families the opportunity to determine how and whether to mark the grave of their decedent.

Inclusion of Domestic Partners and Individuals in Loco Parentis

We received one comment from a private advocacy organization for lesbian, gay, bisexual, transgender, and queer (LGBTQ) families requesting that we include domestic partners and those standing in loco parentis to a deceased

veteran in the definition of “family member” in § 38.600(a)(1) and (a)(2) for burial headstones and markers and memorial headstones and markers, respectively. The commenter stated that the existing definition of “personal representative” in § 38.600(b) unfairly requires family members to pay for burial or memorialization costs that would disqualify those who may not have the means to fund a decedent’s burial services. We clarify that a personal representative need only identify themselves to VA as an individual “responsible for making decisions” concerning burial or memorialization. 38 CFR 38.600(b). There is no financial requirement associated with a memorialization request from a personal representative or any other headstone or marker applicant.

Additionally, this commenter suggested VA include in § 38.600(a)(1)(i) and (a)(2) the domestic partner of a veteran, a child for whom a veteran stood in loco parentis, and a parent who stood in loco parentis for a veteran. Although the proposed expanded list of “a decedent’s family member” or “a member of the decedent’s family” for headstone and marker applicants in § 38.600(a)(1) and (a)(2), respectively, is broadly defined to include almost every possible family relationship, we agree that the language “decedent’s spouse” would not include an individual in a legal union with a veteran if that legal union did not meet the legal requirements of a marriage. VA defined memorialization applicants to include others who are not in marital relationships, and in keeping with other VA efforts to recognize a veteran’s domestic partnership, civil union, and other formal relationship in certain circumstances, we will insert in § 38.600(a)(1) and (a)(2) the language “individual who was in a legal union as defined in 38 CFR

3.1702(b)(1)(ii) with the decedent.” We note that VA’s burial benefits regulation, finalized last year (79 FR 32653, June 6, 2014), defined the term “legal union” in 38 CFR 3.1702(b)(1)(ii) to mean a formal relationship between the decedent and the survivor that existed on the date of the veteran’s death, was recognized under the law of the state in which the couple formalized the relationship, and was evidenced by the state’s issuance of documentation memorializing the relationship.

We do not believe it is necessary to include the commenter’s in loco parentis language because an applicant who is either an individual who stood in loco parentis for a veteran or a child for whom a veteran stood in loco parentis will be included in the “personal representative” definition in § 38.600(b). Under that provision, VA will accept a headstone or marker request from an individual who stood in the relationship of a family member, as suggested by the commenter, and as such we will make no further changes based on this comment.

Replacement Headstones and Markers

VA received fourteen comments that discussed replacing headstones and markers that have become unreadable, are damaged or do not properly mark a veteran’s gravesite. Commenters suggested VA allow historical preservationists and cemetery organizations to request replacement markers, particularly for Civil War gravesites where no family member was likely to exist. One commenter suggested VA make an exception to or consider further expansion of the

applicant definition to include individuals or groups seeking to rehabilitate or replace markers that were, in their view, improperly marked. Another commenter suggested we revise VA Form 40-1330 to include requests for replacement markers. This regulation on applicant definition applies to requests to replace existing markers that may have become damaged or so worn that they are no longer readable, a condition we refer to as “unserviceable,” as well as to requests to mark an unmarked grave. The definition of applicant is equally applicable, irrespective of whether the request is for a new or a replacement headstone or marker. We note, however, that these individuals may be citing difficulties they may have had not in applying for the replacement, but in providing sufficient documentation to support the request. To the extent that these comments are regarding the latter, they are outside the scope of this rulemaking, which only establishes who may apply for a headstone or marker, not whether VA may approve a request. We make no change to the rule based on these comments but we do clarify that individuals identified in this regulation will be recognized applicants for original burial or memorial headstones or markers or for replacement for an unserviceable burial or memorial headstones or markers.

Line of Succession for Family Members

Two commenters suggested VA clarify a decedent’s family member lineage by establishing a line of succession or imposing other requirements to ensure a decedent has an appropriate applicant. One commenter suggested changes to the headstone or marker request form (VA Form 40-1330) to

establish an applicant's relationship to a decedent. The commenter indicated that if a next of kin is not available, VA should allow claims from descendants who demonstrate a relationship to the decedent based on notarized death certificates and statements from physicians. In adopting a new definition of "family member," VA is moving away from the use of "next of kin," so the comment is somewhat outside the scope of this rulemaking. We will be requesting information regarding the relationship of the applicant, but that, too, is beyond the scope of this rule, which is only to establish the definition of applicant.

Another commenter suggested VA clarify the order of priority that will be used in applying the applicant definition for memorial headstone or marker requests in § 38.600(a)(2), which requires an applicant to be a member of the decedent's family, which includes the decedent's spouse (or, with the amendment discussed above, individual who was in a legal union as defined in 38 CFR 3.1702(b)(1)(ii) with the decedent), a child, parent, or sibling, whether biological, adopted, or step relation, and any lineal or collateral descendant of the decedent. Establishing an order of priority is a substantive standard that requires notice and comment. Because this rulemaking only provided notice and sought comment on the definition of applicant, we do not here establish an order of priority that must be followed when we receive a claim from "family members" under either § 38.600(a)(1)(i) or § 38.600(a)(2).

Eliminate Applicant Definition

Several commenters suggested that VA eliminate any definition of applicant for a headstone or marker. In general, these comments express the view that “anyone” can apply for benefits and have their standing to do so adjudicated along with the merits of their request. However, we believe that memorialization benefits are in some ways unique among the benefits that VA provides and require this additional step because, for most other VA benefits, the applicant is requesting benefits for himself or herself. In the case of headstones or markers, the benefit is being requested by a third party on behalf of the individual who is entitled to it. While we have drafted this regulation to broaden the pool of potential applicants, we do not agree that we should eliminate entirely the requirement that a particular applicant must request memorialization on behalf of a veteran or other eligible decedent. First, the authorizing statute, 38 U.S.C. 2306, requires that we provide a headstone or marker “when requested” but does not indicate from whom we should accept such requests. It is generally accepted that an agency may, through regulation, fill a gap such as this. Second, as we have discussed elsewhere in this final rule and in the proposed rule, our intent, as much as possible, is to reserve to the family of the decedent decisions regarding memorialization. This includes the decision not to obtain a government-furnished headstone or marker—or any marker at all, if that is their decision. VA cannot force individuals to apply for or accept the benefits that we provide. In addition to broadening the definition of family beyond the previously more restrictive “next-of-kin” standard, we have provided five additional

categories of applicants who may request a burial headstone or marker. We believe that the new rule sufficiently allows for a very broad applicant pool to request burial headstones or markers for decedents who bear no relation to them, while balancing the need to respect family decisions to memorialize their loved ones, including the decision to leave a gravesite unmarked. We make no changes based on these comments.

Eliminate Date Restrictions

VA received twenty-four comments that objected to VA's use of April 6, 1917, as a limiting date in proposed § 38.600(a)(1)(v), now redesignated as § 38.600(a)(1)(vi). In that paragraph, we state that any individual may apply for a burial headstone or marker for a veteran whose service ended prior to that date, or for an individual whose eligibility for memorialization derives from a veteran whose service ended prior to that date. Several commenters suggested VA either eliminate the date restriction or use a rolling date rather than a specific date. A few commenters suggested use of a different time limit, such as 100 years from dates of the end of WWI (1918) or the end of World War II (1945). Generally, these commenters asserted that use of the 1917 "date-certain" for burial marker requests would only result in VA needing to revisit in the future the same issues we are addressing now that were caused by a restrictive applicant standard. Two commenters suggested VA adopt the applicant standard proposed in legislation introduced in 2013 and 2014, which would allow any person to request a marker if the deceased veteran served more than 62 or 75

years before the date of the memorialization request. As stated in the proposed rule, we chose to include a date after which we felt it will be more likely that living family members could be located and could provide input into the marking of a grave. Further, for those whose service ended after 1917 and who have no living family member, VA provides ample alternatives for non-relative applicants to request a headstone or marker for those decedents. We considered use of a rolling time frame for applicants requesting memorialization and found that implementation of such a process would likely be more complex than would be required when using a date certain. The rolling date actually equates to a date certain, but a constantly changing one. Adopting an ever-changing standard introduces increased risk of human error in determining whether the service was or was not within the defined time frame. In addition, it may require annual updates to the computer system to recognize the newly calculated year. As indicated in the proposed rule, the 1917 date was established based on the objective likelihood that those decedents will not have living family members to request a headstone or marker.

Allow Non-Relative Memorial Marker Applicants

VA received three comments objecting to § 38.600(a)(2), in which we require that applicants for memorial headstones and markers to be members of a decedent's family, including collateral and lineal descendants. Commenters suggested VA include non-relative applicants, such as historians, personal representatives, VSOs, townships and counties, in the definition of applicant for

memorial headstone and marker requests. As explained in the proposed rule, memorial headstones and markers, as authorized under 38 U.S.C. 2306(b), are distinguished from burial headstones and markers because they are intended to commemorate an eligible individual whose remains are unavailable for burial to provide a family with a physical site to gather to mourn and remember their loved one, similar to that provided by a burial headstone or marker when remains are available for burial. As such, VA has determined that requests for memorial headstones and markers should be made by family members who are likely to want to memorialize someone whose life had specific meaning to them. The commenters offered no justification on which we would consider changing this previously stated position, therefore, we make no changes to the applicant definition based on these comments.

Various Comments Outside the Scope of the Proposed Rule

VA received ten comments that do not fit in any of the other categories of comments discussed above and that VA finds to be outside the scope of the proposed expansion of the applicant definition. One commenter suggested the language of the proposed rule was too difficult for ordinary citizens to decipher. VA tries to make the regulations as accessible as possible for the general public. Most commenters seemed to understand the proposed rule because their comments were clearly related to concepts expressed in the rule, so we do not believe the rule was unnecessarily difficult. Several other commenters made suggestions regarding considerations VA should make in approving requests for

headstones and markers. For example, one commenter suggested using DNA, archival, and other technologies and assembling a volunteer veteran panel to verify the identity of an interred veteran to determine the appropriate memorialization. Another commenter advised VA to exercise caution to ensure that headstone or marker inscriptions, including emblems of belief and service information (e.g., Medal of Honor) be valid and appropriate, and another advised checking for the “reasonableness” of a request to ensure we do not mark a grave for the same individual multiple times. Another commenter suggested VA impose penalties for the destruction of a Government-furnished headstone or marker. Two commenters referred to procedures relating to memorialization of veterans interred in foreign countries. Two commenters expressed concerns about the limitation of headstones and markers for decedents who die prior to the November 1, 1990, date, which applies to eligibility for a second marker under 38 U.S.C. 2306(d)(4). Another commenter appeared to assert that VA requires proof of burial in requests for a memorial headstone or marker and expressed disagreement with such a requirement. One commenter suggested VA create bronze or metal emblems to be affixed to non-VA headstones and markers. All of these comments are in regard to aspects of the headstone and marker program that are unrelated to the proposed amendment of the applicant definition. It would be inappropriate to address these issues in this final rule, and there are no changes we can make to the rule on the definition of applicant that would address these comments.

Proposed Rule Vulnerabilities

One commenter noted the proposed expansion of the applicant definition would be problematic because it would increase costs beyond what was estimated in the economic impact analysis and could be abused by interested third parties. Allowing non-relatives to request memorialization for veterans who have long been deceased could potentially conflict with what the commenter believes is a family's responsibility to mark a gravesite or leave the gravesite unmarked in accordance with veteran's family's wishes at the time of burial. The commenter remarked that unaffiliated individuals and special interest organizations should not be allowed to further their own goals by manipulating another person's gravesite, particularly a veteran's. The commenter also expressed concern that VA did not require non-relative applicants for veterans post-WWI to document that an attempt was made to locate the decedent's family members. We appreciate the commenter's well-reasoned response to our rulemaking, and we assure the commenter that we did consider these issues prior to issuing the proposed rule. However, the intention of the rule was to increase the ability of these interested parties to apply for headstones and markers because VA shares their goal of ensuring that graves of those who have served our country are appropriately marked. We believe our approach strikes an appropriate balance between protecting the interests of a decedent's family and ensuring the appropriate memorialization of veterans. We note again that implementing an expanded applicant standard is not a guarantee that VA will

issue the requested headstone or marker, so we believe that our estimate of costs is reasonable. To the extent that the commenter's other statements are in regard to approval of an application and not who may apply, we find the comments outside the scope of this rulemaking.

Single Commenter

VA received seventeen separate comments from a single commenter whose remarks about the proposed rule primarily relate back to his efforts to mark the gravesites of veterans who perished in a 1935 hurricane while on a Federal work detail, some of whom are interred in individual gravesites in a private cemetery in Florida, and some whose remains are commingled in a monument located on public land in Florida. We note that we have communicated with this commenter several times on the hurricane veteran memorialization requests (some of his comments included excerpts from that correspondence) and do not address that issue here because it is outside the scope of this rulemaking. Some issues raised by this commenter were raised by other commenters as well, including the estimated costs of the rule, the need to define applicant at all, and eliminating the 1917 limiting date, which are addressed elsewhere in this rulemaking. We address here only the remaining comments provided by this individual as they relate to the proposed rule on the definition of applicant.

The commenter stated that the rule, as proposed, would restrict applications for those who served after WWI and would disenfranchise any such

veteran who lacks a next of kin to present a memorialization request. These statements incorrectly interpret the provisions of the rule, as we provide that family members (which is itself defined more broadly than just “next of kin”), VSOs (and individuals employed by the relevant state or local government whose official responsibilities include serving veterans and families of veterans, as added in this final rule), and others appropriately situated may apply for burial headstones and markers for those who served in WWI and later, and their eligible dependents. The commenter suggested we merely adopt the provisions of either of two bills introduced in the 113th Congress instead of our proposed rule. We decline to make that change because the rule as proposed by VA will allow more individuals to apply for headstones and markers than either of the introduced bills would have allowed, again because of our use of an expansive definition of family member, rather than the limited term “next of kin.” The commenter also suggested VA allow our Congressional oversight committees and the sponsors of two bills time to submit comments on the proposed rule for the record. Given that VA received comments from Congressional members within the designated comment period, we make no changes based on this comment. In another comment, the individual notes that the authorizing statute, 38 U.S.C. 2306, states that VA shall provide a headstone or marker upon request but the statute does not limit who may make the request. He suggests that VA itself should make the request. As discussed previously, it is incumbent on executive branch agencies to provide regulations where statutory authority has gaps. This is what VA has done. Also as discussed previously, VA cannot force

individuals to apply for or accept the benefits we provide. To make the “application” ourselves would be to do just that. The commenter proposed language to VA regulations regarding disinterment, the headstone and marker application process, and group memorial monuments, which fall outside the scope of the proposed rule to amend the applicant definition.

For all the reasons stated in the proposed rule and noted above, VA is adopting the proposed rule as final with the above noted changes.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA’s implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible, or if not possible, such guidance is superseded by this rulemaking.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the final regulatory flexibility analysis requirements of 5 U.S.C. 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site

at <http://www.va.gov/orpm>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.”

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Interim Chief of Staff, Department of Veterans Affairs, approved this document on February 22, 2016 for publication

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Claims, Crime,
Veterans.

Dated: February 26, 2016

William F. Russo
Director
Office of Regulation Policy & Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 38 as set forth below:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2402, 2403, 2404, 2408, 2411, 7105.

2. Amend § 38.600 as follows:

- a. Add paragraph (a);

- b. In paragraph (b) introductory text remove “§§ 38.617 and 38.618” and add in its place “part 38”; and

- c. In paragraph (b) amend the definition of “personal representative” by removing “cemetery director”.

The addition reads as follows:

§ 38.600 Definitions.

(a)(1) Applicant defined – burial headstones and markers. An applicant for a headstone or marker that will mark the gravesite or burial site of an eligible deceased individual may be:

- (i) A decedent’s family member, which includes the decedent’s spouse or individual who was in a legal union as defined in 38 CFR 3.1702(b)(1)(ii) with the

decedent; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent;

(ii) A personal representative, as defined in paragraph (b) of this section;

(iii) A representative of a Congressionally-chartered Veterans Service Organization;

(iv) An individual employed by the relevant state or local government whose official responsibilities include serving veterans and families of veterans, such as a state or county veterans service officer;

(v) Any individual who is responsible, under the laws of the relevant state or locality, for the disposition of the unclaimed remains of the decedent or for other matters relating to the interment or memorialization of the decedent; or

(vi) Any individual, if the dates of service of the veteran to be memorialized, or on whose service the eligibility of another individual for memorialization is based, ended prior to April 6, 1917.

(2) Applicant defined – memorial headstones and markers. An applicant for a memorial headstone or marker to commemorate an eligible individual must be a member of the decedent's family, which includes the decedent's spouse or individual who was in a legal union as defined in 38 CFR 3.1702(b)(1)(ii) with the decedent; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent.

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§ 38.632 [Amended]

3. Amend § 38.632(b)(1) by removing “a Government-furnished headstone or marker and, in appropriate instances,”.

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